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No. 97-1234

In The

# Supreme Court of the United States

October Term, 1997

GEORGE NEWMAN,

*Petitioner,*

v.

CONSOLIDATION COAL COMPANY

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit**

## REPLY TO BRIEF IN OPPOSITION

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## REPLY TO BRIEF IN OPPOSITION

The courts of appeals have sharply divided on whether a district court may condition a maritime personal injury plaintiff's right to try a negligence claim against a shipowner before a state jury on a stipulation disavowing all res judicata effects for those proceedings. Respondent has acknowledged this split, Op. Cert. 10 n.3, and impliedly recognized the importance of the issue for admiralty practice.

Respondent insists, however, that Newman voluntarily accepted[1] the stipulation imposed upon him by the district court, Pet. App. 45a, and he cannot now complain of the deprivation of his rights under the Seventh Amendment, savings to suitors clause, and Jones Act. That is precisely the point of this Petition: whether it was in the power of the district court to dictate a stipulation that rendered nugatory the effect of all subsequent state proceedings.

Respondent's argument is a "heads we win, tails you lose" proposition: maritime plaintiffs may not seek favorable res judicata effects from the state proceedings to which they are entitled. But, if the plaintiffs lose on their substantive negligence claims in state court, the shipowner may exploit that outcome. Respondent urges that if a plaintiff is unhappy

[1] It was Respondent that urged the stipulation against res judicata cover *all* issues to be litigated in state court, not just those bearing on the shipowner's right to limit liability. Op. Cert. 14a-15a. Immediately after Consol filed its Response and Objection to Newman's Motion to Vacate or Dissolve Injunction and to Stay, Op. Cert. 4a, the district court issued an order to that effect. Newman had no opportunity to object, even assuming such an exception would have been in order.

with a stipulation imposed by the district court, she may immediately appeal. But, in such a posture, an appellate court may well abstain until such time as a state court has passed on the underlying merits of the plaintiff's negligence claim against a shipowner. *See, e.g., Complaint of McCarthy Bros./Clark Bridge*, 83 F.3d 821, 830-31 (7th Cir.), cert. denied, 117 S.Ct. 361 (1996). But then, according to the Third Circuit and the Respondent, it is too late -- a challenge to the district court's original imposition of the stipulation cannot be maintained. Under Respondent's theory, this issue will persistently evade review.

The posture of this case is typical, if not paradigmatic, for those presenting this important point. Demanding that a maritime personal injury plaintiff seek what would otherwise be a permissive interlocutory appeal of a district court's imposition of a stipulation, or require that additional exceptions be taken (which are, in any event, disclaimed under Fed. R. Civ. P. 46), would be contrary to sound principles of appellate practice and judicial economy. It is precisely because this Petition now comes after the state and federal proceedings have fully run their course, that the concerns it raises are clearly revealed: the proper allocation of authority between state and federal courts in claims brought against shipowners.

## CONCLUSION

For the foregoing reasons, along with those earlier presented, the Petition should be GRANTED.

Respectfully submitted,

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